Per Andersen, LEGAL PROCEDURE AND PRACTICE IN MEDIEVAL DENMARK

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Danish legal history is not among the best-known legal histories in Europe, largely because research in more widely spoken languages has been lacking. Per Andersen's work now helps to fill the lacuna insofar as the history of procedural law is concerned. Andersen's approach, however, is anything but national. Instead, he sets out to explain the development of medieval Danish procedure in a comparative perspective. Abandoning a "state-evolutionary tradition" of historiography, Andersen observes Denmark in a wider perspective of European learned law.

Andersen's book is divided into two parts. The first part covers what I would call a formative period in the development of Danish law of procedure: the period of so-called provincial laws before the year 1300. This is when, as Andersen demonstrates, most of the essential features of Danish procedural law are put into place. The second part extends from where the first part ends to the middle of the sixteenth century. Continuity rather than radical changes characterises the second phase.

The study covers all the most important secular courts: the local courts (*herredsting*), the intermediate courts (*landsting*) and the royal judicial power. In addition, the the patrimonial courts (*birkeret*) receive attention, as well as the town courts. Of the major courts, the author thus excludes only the ecclesiastical courts. Andersen not only uses legislation as his material, but attempts to look at how legal practice corresponded to the wishes of the legislator as well. This creates a fruitful and interesting setting.

The Danish medieval law was actually never a unified legal order, but consisted instead of three different provincial laws: those of Scania, Zealand and Jutland, all dating to the first half of the thirteenth century. The author's main contention here is the following: whereas the Laws of Scania and Zealand show less influence of Roman-canonical procedure, the Law of Jutland "reflects a qualitatively different stage of learned law […] and is fundamentally equal to contemporary learned law outside Denmark." The changes were, as Andersen convincingly argues, necessary because the Fourth Lateran Council of 1215 had prohibited clerics from participating in blood ordeals.

The decisions of the Lateran Council, explains Andersen, forced the Danes to amend their procedural law in several ways. The quest for truth led the Danes to establish juries and entrust them with a certain amount of inquisitorial powers. For Andersen, although the "level of detail" in the Danish laws remained lower as far as learned law was concerned, the Danish laws were nevertheless "substantially" equal to the learned laws in the more southern parts of Europe. The learned procedure emerged as a result of conscious choices of the legislator, medieval law being "living law", "under constant development".

I find Andersen's argument on the "equality" of Danish and Roman-canonical law problematic. Although the Danish laws do show a clear influence of the learned teachings of European scholarship, one cannot help thinking that they remained considerably less developed than the

learned Roman-canon counterparts elsewhere in Europe. Surely this may have resulted at least partly from conscious choices of the Danish legislators. But not every path was open to the legislator. Therefore, I would have liked to see Andersen elaborate more on the social, cultural and political constraints under which the legislator operated. For instance, the crucial question of legal learning is mentioned here and there in the book, but is never developed to the extent one would have wished. Against what we know of the development elsewhere, the degree of Roman-canonical influence has depended essentially on the availability of trained jurists. I think this would also explain the lack of judicial torture in Denmark much better than the lack of "internal unrest", which Andersen proposes, does.

Neither do I find entirely convincing the way Andersen sees the legal traditions preceding the late medieval changes in both Southern Europe and Denmark. He explains the emergence of learned law in Southern Europe with "a linguistic and legal tradition [of Roman law] that was not too far removed from the institutions that were being introduced" – a tradition that Denmark, then, did not share. The basic assumption, however, goes squarely against the common understanding, according to which the procedural development of the high Middle Ages was very much an innovation of the canonists resting their argument on Roman sources only nominally. The reader would, on the other hand, have wanted to read more about the origins of the juries. One now gets the picture that they were the Danish legislator's innovation *ab ovo*, which can hardly be the case when talking about the thirteenth century.

The second part of the book, covering the period after the year 1300 until a few decades after the Reformation is less controversial and provocative in its arguments than the first one. It is, however, nonetheless interesting. Andersen shows how most of the legal administration remained essentially the same during all this period. My own reflection is that the Danish development seems interestingly different from the Swedish one in that all of the levels of Danish judiciary remained virtually unlearned throughout this period. This is not only true for the local and the provincial courts, but also as far as the Royal Court (founded in 1522) was concerned. The procedure, as Andersen minutely explains, was largely similar and unlearned in all of courts. One is only left to wonder, where all the university-trained Danish lawyers had gone.

Despite my critical remarks above, Andersen should be lauded for his fresh, comparative outlook into one of the national legal histories of Europe. The author has offered interesting insights into the history of Danish procedural law, and other scholars will certainly use them in their own studies as comparative material. Although national-minded histories may well be a thing of the past, regional variations of legal history persist. Those variations can only be detected when viewed in comparative contexts.

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